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7           T002-2019-000007

7           HB Doc No. 7935743

8           IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9           IN AND FOR THE COUNTY OF PIMA

10          STATE OF ARIZONA, *ex rel.* MARK  
11          BRNOVICH,

No. C-20191151

12          Plaintiff,

13          v.

14          FABIAN CASTRO-LOPEZ, and

15          JANE DOE CASTRO-LOPEZ,

16          Individually and as part of or on behalf of any  
17          Marital, Business, Corporate, Trust, or other  
Community,

18          ET AL.,

19          Defendants *In Personam*,

20          AND

21          THE PROPERTY LISTED AND  
22          DESCRIBED IN APPENDIX ONE  
23          TO STATE'S NOPF and COMPLAINT,

STATE'S RESPONSE TO  
MOTION FOR SETTLEMENT  
HEARING BY CLAIMANT  
SHALMARIE TULK

(Assigned to Hon. Richard E. Gordon,  
Division 8)

24          Defendants *In Rem*  
25          and *In Personam*.

26          CCSO/DEA Case No. 19-00799

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2       The State of Arizona opposes the setting of a settlement hearing at this time. There  
3 is no authority for a settlement hearing and any settlement conference is premature.  
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5       The property at issue in this case was seized for forfeiture pursuant to Seizure  
6 Warrant Number 19SW300 issued on 01/07/2019 and executed on 01/09/2019. The State  
7 initiated this action by filing its *Notice of Seizure for Forfeiture, Notice of Pending*  
8 *Forfeiture In Rem, and Notice of Impending Forfeiture In Personam* [NOPF] on  
9 03/07/2019.  
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11       In response to the NOPF Shalmarie Tulk filed a claim to two vehicles: a 2005  
12 Dodge 1-Ton Pickup (Item 4.49 in the Seizure Warrant; Item 53 in Appendix One to the  
13 NOPF) and a 2010 BMW (Item 4.50 in the Seizure Warrant; Item 54 in Appendix One to  
14 the NOPF).  
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16       The State then filed its *Complaint In Rem and In Personam* [Complaint] on  
17 05/06/2019. The State provided a Waiver of Service and Summons along with its  
18 Complaint to all named *in personam* Defendants and any *in rem* claimants, giving any  
19 person who executes and returns the Waiver until 07/12/2019 to file an Answer to the  
20 Complaint.  
21

22       Claimant Shalmarie Tulk filed a Motion for Settlement Hearing on 05/17/2019.  
23

24       Shalmarie Tulk executed and returned a Waiver on 05/20/2019.  
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26       To date Shalmarie Tulk has not filed an Answer to the Complaint.  
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No disclosure or discovery has yet been undertaken in this action. Rule 26.1 initial disclosure is due forty days after the filing of Answers. The hearing on claims is to be set, as practicable, sixty days after all parties have complied with Rule 26.1 disclosure. A.R.S. § 13-4311(K). Pursuant to A.R.S. § 13-4311(H) discovery is permitted as of the time of the filing of the parties' pleadings and pursuant to the Rules of Civil Procedure.

Shalmarie Tulk's motion provides no authority for a settlement hearing, and the State has found no authority regarding the existence or operation of a "settlement hearing." A.R.Civ.P., Rule 16.1 permits a party to request a settlement conference. Upon the setting of a settlement conference Rule 16.1 then requires additional actions by the parties in the case. The parties are required to prepare and submit a settlement conference Memorandum containing a description of all claims, defenses, issues and their positions thereon; a description of the evidence they anticipate they will present at trial; a summary of any settlement negotiations to date; an assessment of the likely outcome of a trial; and any other relevant information. All parties are required to attend unless excused by the Court. *See* Rule 16.1, subsections (b)(1), (b)(2)(A-E), and (c). The initial pleadings, disclosure and discovery are where the subject matter requirements for a settlement conference are set forth and developed. Those have yet to occur.

Because the pleadings stage is not complete and because the disclosure and discovery stages have not been triggered it is premature to have a settlement conference, let alone some type of settlement hearing.

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2 For these reasons the State opposes the Motion and asks the Court to deny the  
3 Motion.  
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5 RESPECTFULLY SUBMITTED this 30th day of May, 2019.  
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13 Original e-filed with Clerk of Court  
and distributed via TurboCourt to  
14 assigned Judge and all parties:  
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